

June 7, 2005

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: Bay State Gas Company, DTE 05-27

Dear Secretary Cottrell:

On June 6, 2007, the KeySpan Energy Delivery New England ("KeySpan") and NSTAR Gas Company ("NSTAR", collectively the "Companies") filed Oppositions to the Attorney General's appeal of the Hearing Officer's June 2, 2005, ruling permitting the full party status of KeySpan and NSTAR. In response, the Companies have not stated a valid basis for upholding the Hearing Officer's reasoning that the Attorney General's opposition was untimely. To assist the Commission in its deliberations, the Attorney General requests leave to respond to the Oppositions with the following three points.

While 220 C.M.R. § 1.06(6)(b) grants the Hearing Officer the power to establish a detailed schedule for the proceedings to the extent "necessary and practicable", and the regulations of the Department of Telecommunications and Energy ("Department") allow for extensions to the time, 220 C.M.R. § 1.02(5), the regulations do not expressly permit the reduction in the number of days allowed for responding to interventions. 220 C.M.R. § 1.03. The regulations also do not expressly permit the Hearing Officer to alter the method of calculating time. 220 C.M.R. § 1.02(4). The method of calculating time and the intervention response deadline are fixed, and there is nothing "necessary or practicable" in the circumstances of this case that require just one day to file oppositions.

Although the Department requested oppositions to the intervention of the Companies by e-mailed dated May 27, 2005, KeySpan's Opposition -- Attachment C, it wasn't until May 31, 2005, that the Department informed the Attorney General via e-mail that KeySpan had planned to sponsor two witnesses. Attorney General Appeal -- Attachment A. As discussed during the procedural conference, neither of the Companies disclosed any plans to sponsor witnesses when they contacted the Attorney General. After the Department revealed this plan, which KeySpan now denies existed, the Attorney General voiced his concerns over the impact that full party

status for the Companies would have on the procedural schedule.

The May 27, 2005, e-mail from the Hearing Officer should not be considered an order of the Department. First, the e-mail did not exhibit the typical hallmarks for the form of a Hearing Officer ruling made outside of hearings (no citation to authority, discussion of positions taken or statement of reasons). Second, it is unclear whether the e-mail complied with any notice, publication or service requirements for a ruling. Third, since the record in this case does not reveal any formal request by NSTAR or KeySpan for expedited rulings, it is unknown why the Hearing Officer would limit the time for objections to one day. In light of these circumstances, it makes more sense to interpret the e-mail as guidance on procedural matters from the Hearing Officer, rather than an order. *See Attorney General Appeal -- Attachment A* (Hearing Officer explained that her e-mail statement regarding the beginning and end for hearings was not a hearing officer ruling, but instead a “request” to the parties).

For these additional reasons, the Department should reverse the decision of the Hearing Officer, and grant NSTAR and KeySpan limited intervener status.

Sincerely,

Alexander J. Cochis
Assistant Attorney General

cc. Service list